

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 155 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G.G. MOMIN & ANR.

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR NALIN K THAKKER for Petitioners

MR NIGAM SHUKLA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:

C.A.V. JUDGMENT

Heard learned counsel for the parties. The petitioners were appointed initially as Civil Supervisors on 21.10.65 and 19.7.66, respectively in the Public Health Engineering Department (P.H.E. Department). The petitioners were taken up on temporary establishment from the Work charged establishment on 18.11.69. Both the petitioners are holding Diploma in Civil Engineering (D.C.E). After they were taken in the temporary

establishment, the petitioners were promoted as Deputy Engineers Class II under the orders dated 15.12.78. Prior to 8.10.64, the Public Works Department and the Public Health Engineering Department were same Department. From 8.10.64, the Public Works Department (P.W.D) and the Public Health Engineering Department were bifurcated and two different departments were made. The Government, under its Resolution dated 1.8.78, decided to count the Work charged services of the employees who have been entered in the services in Work charged establishment and then they were taken on temporary establishment for the purpose of counting their seniority. On the same lines, the Government has passed a Resolution dated 20th September 1978 for counting of the services of employees of Work charged establishment in the Department who were taken on temporary basis, for the purpose of counting their seniority. The other employees of the P.W.D., who were offended by the Resolution dated 1.8.78 approached this Court challenging thereunder the validity of the said Resolution. The grievances were made that the Work charged services could not have been counted for the purpose of seniority as two services, i.e. the services in the Work charged establishment and temporary establishment are altogether different. This Court, under its judgment dated 29.1.80 given in Special Civil Application No.2653 of 1978, allowed the petition and quashed and set aside the Resolution dated 1st August 1978. This decision of the Court is reported in 1980 GLR (XXI) 939 in the case of Dalsukhbhai Trikambhai Parmar & Ors. v. State of Gujarat & Ors. After decision of this Court, the Government, vide its Resolution dated 8.5.80, cancelled the Resolution dated 1.8.78. The Resolution which was there for giving of benefits to the employees of Work charged establishment in Health & Family Welfare Department, was also withdrawn by the Government under its Resolution dated 9th October 1980. The petitioners, in this petition are challenging this Resolution of the Government. This writ petition has been contested by the respondents by filing a reply to the same.

2. The learned counsel for the petitioners contended that the Resolution dated 9th October 1980 is bad in law as the before taking the said decision, the petitioners were not given any notice or opportunity of hearing. Carrying on further this contention, the learned counsel for the petitioners contended that the Resolution dated 20th September 1978 confers benefits to the petitioners in the matter of seniority and consequential benefits of future promotions. These benefits conferred to the petitioners have been taken away under the Resolution

dated 9th October 1980. Even if it is taken to be an administrative order, as it effects the civil rights of the petitioners, before passing of the same, principles of natural justice have to be complied with. It has next been contended that the Work charged services has rightly been decided to be counted for seniority as qualifications for the post, source of recruitment, duties to be performed and the pay scale are same in Work charged establishment and temporary establishment of the category of the post to which the petitioners belong. Merely on the ground given that the salaries of the Work charges employees are drawn from a different head than the salaries drawn for the temporary establishment employees, is hardly any ground to make discrimination. The substance should have been given to the services and not to the heads from which salaries are being drawn. The learned counsel for the petitioners urged that it is a case where similarly situated persons have been treated differently. Lastly, the learned counsel for the petitioners contended that the decision of this Court in the case of Dalsukhbhai Trikambhai Parmar & Ors. v. State of Gujarat & Ors. (Supra) requires reconsideration. The decision has been given in respect of P.W.D. employees whereas the petitioners are employees of P.H.E. Department, and as such the decision could not have been made applicable to their cases.

3. On the other hand, the learned counsel for the respondents contended that the matter is no more res-integra. This Court has decided this question in the case of Dalsukhbhai Trikambhai Parmar & Ors. v. State of Gujarat & Ors. (Supra) and nothing remains to be decided. The view taken by this Court is correct and as such it does not require reconsideration. It has next been contended that the benefits of counting of Work charged services have been given to the employees of P.H.E. Department on the lines as given to the employees of P.W.D. Both the departments are engineering departments and prior to 8th October, 1964, there was only one department comprising both these departments. He further contended that the benefits of counting of Work charges services have been given to those employees who have been appointed in Work charged establishment during the period from 1.7.61 to 31.12.72, both in P.W.D. and P.H.E. Department. The employees who have been appointed during the period from 1.7.61 to 8.10.64, were in the same department and after bifurcation of this engineering department in two wings, i.e. P.W.D. and P.H.E. department, some of the employees of that category would have come to one department and others to second department. There is no difference whatsoever in

the services of the category of the petitioners in the P.W.D. and P.H.E.D. The benefits have been extended to both the departments though the orders would have been passed at different times, and the benefits are restricted to a particular class of persons and that class of persons is the employees appointed during the period 1.7.61 to 31.12.72 in both the departments. This Court has decided that counting of Work charged services is illegal and consequently Resolution dated 1.8.78 has been quashed and set aside. The Government has rightly taken a decision to withdraw that Resolution. The Resolution dated 20th September 1978 has been passed on the basis of Resolution dated 1.8.78 and as such when the basis of this Resolution goes, the subsequent Resolution will also not stand. In view of this fact, Shri Shukla, learned counsel for the respondents contended that the Resolution dated 9th October 1980 has rightly been passed. Otherwise it would have amounted to contempt of this Court's order. Summing up his submissions, the learned counsel for the respondents contended that this writ petition is wholly misconceived. The Government has to give effect to the decision of this Court, and exactly the same thing has been done under the Resolution dated 9th October 1980.

4. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

5. A mere perusal of the Resolution dated 20th September 1978 clearly gives out that this decision has been taken by applying the orders issued under the Government Resolution, Public Works Department, No.STS-1478-1-E-5 dated 1.8.78. Under the Resolution dated 1.8.78, which has been passed by the P.W.D., it has been decided to count the seniority of Work charged employees who have been appointed on the establishment from 1.7.61 till 31.12.72, subject to fulfillment of certain conditions. The Resolution dated 9th October 1980 spells out that the Resolution dated 20th September 1978 has been passed by applying P.W.D.s Resolution dated 1.8.78. Both the departments are engineering departments and up to 8th October 1964, were one and same department. Though now there are two different departments, but nevertheless being engineering services and for a long period both were the same departments, same benefits were extended and that is the reason that after Resolution dated 1.8.78, under which employees of P.W.D. Work charged employees were given benefits, the same were extended to the employees of P.H.E.D., though subject to fulfillment of certain conditions. Otherwise in case these benefits given to the Work charged employees of

P.W.D. would not have been extended to the employees of P.H.E.D. working in Work charged establishment, then it would have been a case of discrimination. Taking into consideration these facts, I find sufficient merits in the contentions made by learned counsel for the respondents and the same deserves acceptance that the benefits to the employees of Work charged establishment working in P.H.E.D. have been given only as those benefits have been given to the employees of P.W.D. working in Work charged establishment. Though other contentions have been made by the learned counsel for the petitioner, I consider it appropriate that the same need not be gone into.

6. The Resolution dated 1.8.78 has been challenged by other persons before this Court and this Court, in the case of Dalsukhbhai Trikambhai Parmar & Ors. v. State of Gujarat & Ors. (supra), decided in favour of those persons and the said Resolution has been quashed and set aside. The benefits to the petitioners have been given under the Resolution dated 20th September 1978, which has been passed complying the Resolution dated 1.8.78, which has been quashed and set aside by this Court. The Resolution dated 1.8.78 has been cancelled under the Resolution dated 8th May 1980, and reading of that Resolution gives out that it has been done in compliance of the judgment of this Court given in Special Civil Application No. 2653 of 1978. The Resolution dated 9th October 1980 gives out that the benefits which have been given to the Work charged employees of the P.H.E.D. has to be taken away as the Resolution dated 1.8.78 has been quashed and set aside by this Court. This fact has been specifically recorded in the Resolution dated 9th October 1980.

7. Though the learned counsel for the petitioners contended that the decision of this Court in the case of Dalsukhbhai Trikambhai Parmar & Ors. v. State of Gujarat & Ors. (supra) requires reconsideration, but I do not find any substance in this contention. I am in full agreement with the decision given by this Court in the case of Dalsukhbhai Trikambhai Parmar & Ors. v. State of Gujarat & Ors. (supra) and as such, the Resolution dated 9th October 1980 does not suffer from any infirmity or illegality which calls for interference of this Court sitting under Article 226 of the Constitution of India.

8. The only contention which is to be dealt with is whether principles of natural justice were to be complied with in the present case before passing of the Resolution

dated 9th October 1980 or not. It is true that the Resolution dated 9th October 1980 takes away some civil rights which have been conferred to the petitioners under the Resolution dated 20th September 1978. But the Resolution dated 9th October 1980 has been passed to give effect to the decision of this Court. The Resolution dated 20th September 1978 is based on the fact that it has been passed complying the Resolution dated 1.8.78 and when this latter Resolution has been quashed and set aside, the same has been withdrawn by the Government giving effect to the decision of this Court, and therefore same treatment has to be given to the Resolution dated 20th September 1978. The very base of that Resolution has been declared to be illegal and invalid and consequence thereof is to render this Resolution also invalid and inoperative. The Resolution dated 9th October 1980 is the Resolution which has given effect to the decision of this Court. Taking into consideration these facts, I consider it to be a case where the respondents are not required to follow the principles of natural justice as contended by the learned counsel for the petitioners.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. No order as to costs.

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(sunil)